

Response

Serial No.: 10/798,616

Confirmation No.: 6205

Filed: 11 March 2004

For: DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY LAWN MOWER

Page 2 of 5

Remarks

The Office Action of August 9, 2005 has been received and reviewed. With no claims having been amended, added, or canceled, the pending claims remain claims 14-24. While Applicants believe the pending rejections have been adequately addressed in previous responses (all of which are incorporated herein by reference), additional remarks are provided below in an effort to move this case forward. Reconsideration and withdrawal of the pending rejections are respectfully requested.

The 35 U.S.C. §102 Rejection

Claims 14-23 were again rejected under 35 U.S.C. §102(b) as being anticipated by Scag (U.S. Patent No. 4,146,105). This rejection was originally made in the October 26, 2004 Office Action, but was withdrawn in view of Applicants' subsequent response.

Independent claim 14 recites, a deck assembly having: a deck defining a cutting chamber operable to house a cutting member, wherein the cutting chamber is bound at least in part by a rear enclosure member; and a rectangular rear discharge port located on a rear portion of the deck. The deck assembly further includes "a duct of substantially rectangular cross section extending through the rear enclosure member between the cutting chamber and the rectangular rear discharge port, the duct defining a duct axis that is substantially parallel to a longitudinal axis of the mower."

Scag discloses a drive system for a power lawn mower wherein the mower includes a mower deck 12 (see Figure 3). However, Scag fails to teach each and every element of claim 14. For example, while the mower deck 12 includes a chute 31 (see Figure 3), the chute 31 of Scag clearly fails to define an axis that is "substantially parallel to a longitudinal axis of the mower." Rather, an axis of the chute 31 extends upwardly and to one side of the mower as evident in Figure 3.

Response

Serial No.: 10/798,616

Confirmation No.: 6205

Filed: 11 March 2004

For: DECK ASSEMBLY FOR A SELF-PROPELLED; WALK-BEHIND ROTARY LAWN MOWER

Page 3 of 5

Nonetheless, in the "Response to Arguments" section, the Office Action states that

'substantially' could be interpreted slightly upwardly as shown by Scag, since it does not state 'exactly' or any recitation that limits to 'parallel' only interpretation. Secondly, even if Scag's chute extends upwardly, it is still parallel to a longitudinal axis of the mower.

Office Action, page 5, paragraph 5.

Applicants disagree with these statements for at least the following reasons.

To anticipate a claim, each and every element of the claim must be found in a single prior art document (see M.P.E.P § 2131). Moreover, the identical invention must be shown "in as complete detail as is contained in the ... claim" (*Id.* at § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)).

With regard to the Office Action's first assertion, the phrase "substantially parallel," as one of skill in the art would understand it in view of the specification, is to define the identified duct axis (see, e.g., axis 166 in Figure 5) as being essentially parallel to the longitudinal axis of the mower. Such broadening modifiers as "substantially" are a long-accepted practice and are often-used in claim drafting for a variety of reasons, e.g., to avoid reliance on the doctrine of equivalents.

With regard to the Office Action's second comment, a chute that extends upwardly and/or to the side of the mower (as the chute of Scag does), is clearly not substantially parallel to a longitudinal axis of the Scag mower as would be required to anticipate claim 14.

Applicants note that the term "longitudinal," as commonly defined, means "of longitude or length" or "lengthwise." *See*, e.g., Random House Webster's Dictionary, Third Edition, page 424 (1998). There is no reasonable basis identified to assert that the arbitrary axis that the Office Action identifies in its own figure could be considered a longitudinal axis of the Scag mower.

Moreover, even if such an assertion could be made, Applicants' specification clearly describes the longitudinal axis of the mower (see, e.g., Page 16, Ln. 12-13, and reference

Response

Serial No.: 10/798,616
Confirmation No.: 6205
Filed: 11 March 2004

Page 4 of 5

For: DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY LAWN MOWER

numeral 170 in Figure 2), and describes the duct axis 166 (see, e.g., Figure 5) as being "substantially parallel" to the longitudinal axis 170 (*Id.* at Page 16, Ln. 12-13).

Accordingly, Applicants submit that Scag clearly fails to teach each and every element of independent claim 14 and, thus, clearly fails to satisfy the objective criteria required to anticipate that claim. It is further submitted that claims 15-23 are novel not only in view of their dependence, but also because of the particular subject matter recited therein. Reconsideration and withdrawal of the rejection are, therefore, requested.

The 35 U.S.C. § 103 Rejection

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

M.P.E.P. § 2143.

Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Scag in view of Sugden et al. (U.S. Patent No. 6,192,666). Applicants traverse this rejection for at least the following reasons.

As set forth above in the response to the 35 U.S.C. § 102(b) rejection of claims 14-23, Scag fails to disclose, or even suggest, each and every recitation found in the claims (e.g., fails to disclose, or suggest, a duct defining a duct axis that is substantially parallel to a longitudinal axis of the mower). There is nothing identified within the disclosure of Sugden et al. that remedies this deficiency. Accordingly, the combination of Scag and Sugden et al. fails to teach or suggest all the claim recitations and, therefore, fails to render claim 24 obvious.

Reconsideration and withdrawal of the rejection of claim 24 are requested.

Response

Serial No.: 10/798,616

Confirmation No.: 6205

Filed: 11 March 2004

For: DECK ASSEMBLY FOR A SELF-PROPELLED, WALK-BEHIND ROTARY LAWN MOWER

Page 5 of 5

Summary

It is submitted that pending claims 14-24 are in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted by

Mueting, Raasch & Gebhardt, P.A.
P.O. Box 581415
Minneapolis, MN 55458-1415
Phone: (612) 305-1220
Facsimile: (612) 305-1228
Customer Number 26813

8 Nov. 2005

Date

By: Matthew W. Adams

Matthew W. Adams
Reg. No. 43,459
Direct Dial (612) 305-1227

CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 8th day of November, 2005, at 3:52 PM (Central Time).

By: Sara E. WigantName: Sara E. Wigant